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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 KHOSRO GH-KHOEE,

13 Plaintiff,

14 v.

15 WELLS FARGO BANK, NATIONAL
ASSOCIATION, FIRST AMERICAN
16 LOANSTAR SERVICES, LLC, a Texas
limited liability company DBA FIRST
17 AMERICAN TRUSTEE SERVICING
SOLUTIONS, LLC; and DOES 1 through 100,
18 inclusive,

19 Defendants.
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Case No. 11-cv-1954-JLS-WMC

**DEFENDANT WELLS FARGO BANK'S
EX PARTE MOTION TO DISMISS
PLAINTIFF'S COMPLAINT WITH
PREJUDICE PURSUANT TO FED. R.
CIV. P. 41(b); MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Assigned to: The Hon. Janis L. Sammartino,
Courtroom 6

Complaint Filed: June 30, 2011

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2
3 **PLEASE TAKE NOTICE** that Defendant Wells Fargo Bank, N.A. ("Wells Fargo")
4 hereby moves the Court for an order dismissing Plaintiff's lawsuit with prejudice pursuant to
5 Federal Rule of Civil Procedure 41(b). Judgment should also be entered in favor of Wells Fargo.
6 If a hearing is set for this motion, it will be heard in Courtroom 6 before the Honorable Janis L.
7 Sammartino of the above-entitled Court, located at 940 Front Street, San Diego, California 92101.

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9 The Motion to Dismiss is brought on the grounds that, pursuant to the Court's order of July
10 16, 2012 granting Wells Fargo's Motion to Dismiss (Doc. # 8), Plaintiff Khosro Gh-Khoei
11 ("Plaintiff") failed to file an amended complaint within 15 days – the time authorized by the
12 Court. Accordingly, this lawsuit should be dismissed with prejudice.

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14 The Motion is based upon this Notice of Motion, the following Memorandum of Points
15 and Authorities, and all pleadings and papers on file in this action, and other such matters and
16 arguments as may be presented to the Court in connection with this Motion.

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19 Dated: August 7, 2012

20 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

21 By /s/ Mark G. Rackers
22 EDWARD D. VOGEL
23 MARK G. RACKERS

24 Attorneys for Defendant
25 WELLS FARGO BANK, N.A.
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MEMORANDUM OF POINTS AND AUTHORITIES

On July 16, 2012, the Court entered an Order granting Wells Fargo's Motion to Dismiss Plaintiff's complaint – dismissing Plaintiff's fourth, ninth, tenth, eleventh, twelfth, fourteenth, and fifteenth causes of action with prejudice and Plaintiff's first, second, third, fifth, sixth, seventh, eighth, thirteenth, sixteenth, and seventeenth causes of action without prejudice – pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. # 8). *See* Exhibit A, attached hereto. Plaintiff was given 15 days, or by July 31, 2012, to amend his complaint. The deadline to amend has passed and Plaintiff has yet to file or serve an amended complaint. Accordingly, there is currently no operative complaint on file in this case.

“For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.” Fed. R. Civ. Proc. 41(b). Rule 41(b) requires that federal actions be prosecuted with “reasonable diligence” in order to avoid dismissal. *Anderson v. Air West, Inc.*, 542 F.2d 522, 524 (9th Cir. 1976). The Court possesses inherent power to dismiss either upon a noticed motion by the defendant or *sua sponte*, without notice or hearing, “to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-32 (1962) (“The authority of a federal trial court to dismiss a plaintiff's action ***with prejudice*** because of his failure to prosecute cannot seriously be doubted. The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts.” (emphasis added)).

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1 Plaintiff has made no effort to amend his complaint to address the pleading defects
2 identified in the Motion to Dismiss and the Court's order pursuant thereto. Accordingly, Plaintiff
3 has failed to prosecute his claims with the "reasonable diligence" required by Rule 41(b).
4 Wells Fargo respectfully requests that the Court dismiss this case with prejudice pursuant to Rule
5 41(b). Wells Fargo also requests that judgment be entered in its favor.

6
7 Dated: August 7, 2012

8 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

9 By /s/ Mark G. Rackers

10 EDWARD D. VOGEL

11 MARK G. RACKERS

12 Attorneys for Defendant

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